IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5851 OF 1991

Mr.S.G.Deshmukh for the Petitioner.

Ms.S.M.Dandekar for the Respondents Nos. 1 & 2.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 17TH AUGUST,2005

P.C.:

1. By this petition the Petitioner challenges the order dated 30th September, 1991 passed by the Civil Judge, Sr.Division, Sangli below application at Exh.104 on the record of the Spl.Civil Suit No.16 of 1968. It appears that in that civil suit an issue of tenancy was framed and that issue was referred to the tenancy court. Ultimately the matter came up before this court in the shape of Writ Petition No.3642 of 1981. In that Writ Petition, parties filed consent terms and the

Writ Petition was disposed of on the basis of the consent terms. Consent terms are dated 11-2-1987.

2. Thereafter, an application was moved by the Plaintiffs in the suit for disposing of the suit in terms of the consent terms which were reached in this Court. The trial court rejected that application by order dated 14-10-1991. The main reason that appears to have been given by the court is that the certified copy of the consent terms was not produced before it and the consent terms which were produced before the court were not signed by the Defendants. It appears that the present Petitioners were Defendants Nos. 4 and 5 before the trial court. They did not appear before the court when the suit was filed in the year 1968. They also did not file any written statement. Thereafter an order proceeding exparte against them was made by the trial court. An application was moved in the year 1991, to be precise on 5-8-1991, for setting aside the order proceeding exparte

against them and for taking their written statement on record. The Court disposed of that application by order dated 30th September, 1991 noting that the application was taken out after expiry of period of 23 years. The court found that in the application no reason was given why the application was not made earlier. The court also found that the Defendants did not appear even when the Plaintiffs moved for disposing of the suit in terms of the compromise. Against the order dated 30th September, 1991 the present petition was moved.

3. When the matter came before this court it was represented to the court by the Petitioner , as is apparent from the order dated 20th December, 1991 that the matter can be disposed of at the stage of admission itself and therefore notice before admission was issued and it was made returnable on 9-3-1992 and the court also granted ad-interim order in terms of prayer clause (c). The effect of the ad-interim order was that further

proceedings in the Spl.Civil Suit No.16 of 1968 remained stayed.

4. The Petitioner took 14 years to serve all the Defendants in the suit and thus the matter appeared before me for admission today i.e. 17th August, 2005.

5. I have heard the learned counsel appearing for the Petitioner at length. He is not able to point out to me any patent error of law in the order impugned, except for saying that written statement was not filed by the Defendants Nos. 4 & 5, who are the present Petitioners, because the issue was referred to the tenancy court. That submission has no substance because necessity of filing the written statement arises before issues are framed. What was to be explained by the Petitioners is why they did not file written statement before issues were framed and one of the issue was referred to the tenancy court. The net result is that on the basis of this petition the Petitioner has managed to keep the civil suit pending for

last 14 years. The suit has been filed in the year 1968. Reference to tenancy court got terminated because of compromise between the parties in the year 1997. Still today the civil suit is pending. It is, therefore, obvious that the petition has no substance and is liable to be rejected. However, considering the conduct of the Petitioner it would be in the interest of justice to impose exemplary costs on the Petitioner for abusing the process of the court in such a manner. Considering the conduct of the Petitioner, in my opinion, costs in the amount of Rs.25,000/- would be appropriate. Petition is rejected. The Petitioner is directed to pay as and by of costs of this petition Rs.25,000/- to the Plaintiffs, who are Respondents Nos. 1 & 2 in the petition. Petitioners to pay costs as directed by this order within a period of four weeks from today. Failing which the Plaintiffs shall be entitled to execute the order as a decree passed by the civil court.

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